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NOTICE OF PETITION FOR A REFERENDUM FOR A MCLEAN LAKE PARK MAY BE INVALID

On February 26, 2008 the City of Whitehorse received notice of petition for a referendum for a McLean Lake Park. The notice included the question being asked by the petitioners.

Section 7 of the City of Whitehorse Petition, Plebiscite, and Referendum Bylaw [attached] states that if the "petition question is for a bylaw outside of Council's jurisdiction or for a bylaw that may be invalid on other grounds such as being discriminatory . . ." then the City of Whitehorse can apply to the Court for a declaration that the petition is invalid on the grounds that the bylaw it seeks would be invalid.

Issues Arising

1. There are three private properties and leases contained in the area identified in the petition for referendum question as presented. The City of Whitehorse therefore has some concern as to the validity of the question; and has asked for a legal review of the question.
2. The legal review will look at whether the City of Whitehorse has the authority to do what the question is asking. Also, this particular question impacts the Official Community Plan process which has its own legislated process.

The legal review may indicate that a question might be:

1. Acceptable as presented
2. Might need to be different [including materially different], or
3. Not valid at all

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3. Ultimately, the petition question must be formed into a bylaw and be clear in intent for a simple yes or no answer.

Accordingly, the City has committed taxpayer resources to determine the sufficiency of the question. The legal review is expected to be in the City's possession by March 28, 2008.

If the question is determined to be sufficient to be formed into a legally valid bylaw, then the City Clerk can sign Part A of Exhibit A of the Petition, Plebiscite, and Referendum Bylaw and the proponent's signature collection process can start. At this point the City Clerk is prevented from signing Exhibit A until the legal review is completed.

The City advised the proponent of the concerns raised by the question and the need for a legal review. The proponent was also advised that the lawyers would require a considerable length of time in which to do a thorough review, and the City pledged to keep the proponent up to date with developments as they occur.

The proponents of the petition have started the process of collecting signatures before the City has accepted the question. If the legal review reveals that the question is not legally valid, then the City of Whitehorse will be compelled to challenge the question. Any signatures collected on an invalid question will be null and void.

The proponent was advised of the reasons for the delay on the acceptance of the question, as well as the possible consequences of proceeding before the question was accepted by the City. The proponent has been advised to cease collecting signatures until such time the question's validity per the legislation can be established.

Background

In 1953 the area surrounding McLean Lake was designated by the Commissioner as the McLean Lake Game Sanctuary, this designation has since been rescinded by the Government of Yukon.

In 2002, the 2002 Official Community Plan (OCP) designated the area around McLean Lake as Environmental Protection, and designates an additional area surrounding the lake as Greenbelt. Section 4.3 of the OCP also provides for buffers and other protective measures to ensure that areas such as McLean Lake are protected. The City of Whitehorse is 41,600 hectares in size, 37% of this space in Whitehorse is allotted to Green Space.

Current Legal Issues

Territorial Contracting applied on September 5th, 2007 to rezone 4 hectares of land in the McLean Lake area to allow for the development of a concrete batch plant. Territorial Contracting initially proposed a 14 hectare development on the McLean Lake Road. In 2006, the applicant received approval from Yukon Government, pending City approval, to enter into a lease agreement for a quarry area on 10 hectares and a purchase agreement for a shop, aggregate washing facilities, office and batch plant on 4 hectares. A Yukon Environmental Assessment Act Screening Report on the proposed quarry and batch plant was completed in January 2005. This report concluded that the project was not likely to cause significant adverse effects.

In June 2006 Territorial Contracting applied to rezone the 14 hectare area to allow for the development of a quarry and concrete batch plant. Bylaw 2006-36, a bylaw allowing this zoning amendment was given third reading on February 12, 2007.

In April 2007, the McLean Lake Residents Association filed a petition with the Yukon Courts arguing that Bylaw 2006-36 was not valid. This legal challenge was based on several arguments, one of which was focused on Official Community Plan Policy 11.2.4. This policy states that: "A detailed hydrological and hydrogeological assessment of the McLean Lake watershed shall be undertaken prior to any further gravel extraction".

In a judgment passed in August 2007, the Yukon Supreme Court stated that Bylaw 2006-36 was in contravention with the OCP and is thus not valid. Regarding the remaining Residents Association arguments, Judge Veale found the City's analysis satisfactory.

Territorial Contracting then applied to rezone only the 4 hectare area for the development of a concrete batch plant and this was done through Bylaw 2007-39 which passed 3rd Reading on November 13, 2007. This bylaw was able to be passed because the gravel extraction that was previously ruled against by the Supreme Court was no longer in the application for re-zoning.

This amendment changed the zoning from FD—Future Development to IQx—Quarries Restricted, with the x restriction being that only concrete plants are permitted as a principal use. The McLean Lake Residents Association has challenged this bylaw and a pre-hearing conference on February 27, 2008 was held with respect to scheduling a trial date for this matter and the filing dates for the submission of materials. Mr. Justice Gower has been assigned to hear this matter and he will hear this May 15, 2008 commencing at 10:00 a.m.

Official Community Plan and Referendum Details

In its deliberations from time to time, Council has identified that a park area at McLean Lake will be brought forward for discussion during the next OCP amendment, which will start this fall 2008. The public will have the opportunity to express their thoughts through the regular OCP process at that time. Therefore, Council could consider the designation of a park in the scheduled OCP update.

Referendums are governed through the *Municipal Act* and the City of Whitehorse Petition, Plebiscite, and Referendum Bylaw [attached]. Referendums are budgeted at \$10,000 plus administrative overhead of \$4,000 for a total of \$14,000 cost to the taxpayer.

The time it takes for a referendum varies but because this petition is on an Official Community Plan issue, there are legislated Official Community Plan timelines which means a vote on this issue could not occur until at least October 2008.

Previous City of Whitehorse Referendums		
Bylaw #	Description	Year
2006-35	Arkell Expansion Area	2007
2006-11	Planning Study Bylaw	2006
976	Jim Light Arena Replacement	1983
956	Nuclear Disarmament	1983
834	New Swimming Pool	1981
653	Recreation Complex (Note: this was a Taxpayers vote, i.e., no renters, so not a true referendum that included electors)	
582	Public Drinking	1977
470	Electrical Distribution	1975
420	Robert Campbell Bridge Funding	1974

